

Urmila Devi Vs. Returning Officer (Panchayat) and ors.

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SooperKanoon Citation : sooperkanoon.com/507452

Court : Madhya Pradesh

Decided On : Apr-09-2008

Reported in : 2008(4)MPHT410

Judge : S.K. Seth, J.

Appellant : Urmila Devi

Respondent : Returning Officer (Panchayat) and ors.

Disposition : Petition dismissed

Judgement :

ORDER

S.K. Seth, J.

1. Petitioner is aggrieved by order dated 24-10-2005 passed by SDO, Indore. By the order impugned, the election petition preferred by the petitioner against Respondent No. 2 was rejected on the ground of limitation, lack of proper verification and improper presentation of the election petition.

2. It is not in dispute that election to the office of Surpanch, Gram Panchayat, Chhota Bangarda, Tehsil and District Indore, were held in 2005. In the said election Respondent No. 2 secured maximum votes, therefore, she was declared elected to the office of Surpanch. Said election was challenged in an election

petition filed by the petitioner. The election petition was presented on 7-3-2005 by the Counsel for the petitioner before the Competent Authority as is clear from the order-sheet filed along with this petition. After notice, the Returning Officer, Respondent No. 1 herein, filed reply which was adopted by the Respondent No. 2 as is evident from the order sheet recorded on 7-7-2005. An objection was taken with regard to maintainability of the election petition on the ground that presentation of the election petition was not proper and contrary to Rule 3 of M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995. Relevant extract of Rule 3 of 1995 Rules reads as under:

3. Presentation of election petition.- (1) An election petition shall be presented to the Prescribed Authority during the office hours by the person making the petition or by a person authorised in writing in this behalf by the person making the petition within thirty days from the date on which the election or co-option in question was notified.

(2)

It is agreed between learned Counsel for the parties that if the presentation of an election petition is held to be improper, then there is no need to go into the other questions of limitation and improper attestation of election petition.

3. Learned Counsel for the petitioner submitted that Rule 3 of 1995 Rules is only directory in nature and a mere technical default should not entail dismissal of the election petition without trial.

4. Per contra, learned Counsel for Respondent No. 2 submitted that the provisions contained in Rule 3 of 1995 Rules are mandatory in nature and where requirement of provisions is not complied with, no decision on merit can be given by the Prescribed Authority.

5. After having heard rival submissions of learned Counsel for the parties and going through the material available on record, we find force in the submission of learned Counsel for Respondent No. 2. Rule 3 of 1995 Rules which is *pari materia*

to Rule 3 of 1991 Rules. Rule 3 of 1991 Rules came up for consideration of this Court in the case of *Suman Santosh Kumar Patel v. Bhanwati Mahesh Pratap Patel* 1999 (1) MPLJ 88, in which, after examining various decisions of Supreme Court, it was held that if the requirement of Rule 3 regarding presentation is not fulfilled, then the election petition is liable to be dismissed. This Court did not accept the contention that by virtue of Vakalatnama a lawyer becomes a person authorised by the election petitioner to present the election petition. It was held that Vakalatnama does not authorise an Advocate in writing to present the election petition before the Competent Authority.

6. The presentation of election petition through a lawyer under the provisions of Representation of People Act, 1951 also came up for consideration before this Court in *Ramanlal Surajbhan Premy v. Shivpratap Singh and Anr.* 1978 MPLJ 399 and it was held therein that the presentation of an election petition under Section 81 of the Act by the Counsel is not a proper presentation and in that eventuality, the election petition is liable to be dismissed.

7. In view of the aforesaid settled legal position, the inevitable result is that the election petition preferred by the Counsel on behalf of the petitioner was not properly presented and as such, it was liable to be dismissed and was rightly dismissed by the Competent Authority.

In view of the aforesaid, it is not necessary for this Court to go into other questions. In the result, writ petition fails and is hereby dismissed without any order as to costs.